

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE FOR THE TWENTIETH
JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,
Petitioner,

v.

INTERMEDIA PARTNERS SOUTHEAST,
a California general partnership, INTERMEDIA
PARTNERS IV, L.P., a California limited
partnership, and BRENMORE CABLE
PARTNERS, L.P., a California general
partnership, doing business as
INTERMEDIA@HOME,

Respondent.

ASSURANCE OF VOLUNTARY COMPLIANCE

THIS ASSURANCE OF VOLUNTARY COMPLIANCE ("Assurance") is given by INTERMEDIA PARTNERS SOUTHEAST, a California general partnership, INTERMEDIA PARTNERS IV, L.P., a California limited partnership, and BRENMORE CABLE PARTNERS, L.P, a California general partnership, doing business as INTERMEDIA@HOME ("Respondents"), to PAUL G. SUMMERS, Attorney General and Reporter for the State of Tennessee ("Attorney General") on behalf of DAVID A. MCCOLLUM, the Director of the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance ("Division").

WITNESSETH:

Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

A. The Division and the Attorney General conducted an investigation of specific business practices of the Respondents. These practices include promoting Respondents' cable Internet services to consumers using a chain referral prior to the consumers becoming Intermedia@Home subscribers. Such solicitations stated that persons that elected to subscribe to Intermedia@Home would receive a "free month of service for every subscriber you refer." This type of solicitation made before a consumer becomes a subscriber is a chain referral in violation of Tenn. Code Ann. § 47-18-104(b)(18). Additionally, even if the offer was made after the subscriber became a customer, Respondents failed to clearly and conspicuously disclose that the consumer might not receive a free full month of service for each referral, instead it would be the value of the service referral which might be less than the monthly amount of the subscriber's Internet access fee. Respondents' business practices are more fully described in the State's Petition. As a result of the investigation, the Division and the Attorney General determined that certain acts and practices of Respondents violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.* (the "Act").

B. Respondents neither admit nor deny any wrongdoing. Further, pursuant to Tenn. Code Ann. § 47-18-107(c), acceptance of this Assurance by Respondents shall not be considered an admission of a prior violation of the Act.

C. Therefore, pursuant to Tenn. Code Ann. § 47-18-107, Respondents desire to give this Assurance, and the Attorney General desires to accept it, in order to avoid the expense of litigation.

NOW, THEREFORE, acting pursuant to Tenn. Code Ann. § 47-18-107, Respondents gives, and the Attorney General accepts, the following assurances:

1. DEFINITIONS

As used in this Assurance and accompanying Agreed Order, the following words or terms shall have the following meanings:

1.1 "Assurance of Voluntary Compliance" or "Assurance" shall refer to this document

entitled Assurance of Voluntary Compliance in the matter of *State of Tennessee v. InterMedia Partners Southeast, a California general partnership, Intermedia Partners IV, L.P., a California limited partnership, and Brenmore Cable Partners, L.P, a California general partnership, doing business as InterMedia@Home.*

1.2 "Consumer" means any person, a natural person, individual, governmental agency or other entities, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.

1.3 "Division" or "Division of Consumer Affairs" shall refer to the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance.

1.4 "Respondents" shall refer to InterMedia Partners Southeast, a California general partnership, Intermedia Partners IV, L.P., a California limited partnership, and Brenmore Cable Partners, L.P, a California general partnership, doing business as InterMedia@Home and/or any and all officers, owners, employees, agents and representatives of InterMedia@Home or InterMedia Partners Southeast.

1.5 "Petitioner", "State of Tennessee", or "Attorney General" shall refer to the Office of the Tennessee Attorney General and Reporter.

1.6 "Tennessee Consumer Protection Act" or "Consumer Act" shall refer to the Tennessee Consumer Protection Act of 1977 and related statutes found at Tenn. Code Ann. §§ 47-18-101, *et seq.*

2. JURISDICTION

2.1 Jurisdiction of this Court over the subject matter herein and over the persons of the Respondents for the purposes of entering into and enforcing this Assurance and Agreed Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Assurance and Agreed Order, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof. Respondents agree to pay all court costs and reasonable attorneys' fees and any costs associated with any successful petitions to enforce any provision of this Assurance and Agreed Order against Respondents.

3. VENUE

3.1 Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Assurance is solely in the Chancery Court of Davidson County, Tennessee.

4. PERMANENT INJUNCTION

Accordingly, it is hereby agreed that upon approval of the Court, Respondents shall be permanently and forever enjoined and bound from directly or indirectly engaging in the practices set forth herein:

4.1 Respondents shall be prohibited from directly or indirectly engaging in any misleading, unfair or deceptive acts or practices in the conduct of its business. Respondents shall fully comply with all provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.*, including but not limited to §§ 47-18-104(a), (b)(18) and (b)(27), which prohibit unfair and deceptive acts and practices.

4.2 Respondents shall be prohibited from directly or indirectly using or employing a chain referral sales plan in connection with the sale or offer to sell goods, merchandise or anything of value using a sales technique, plan arrangement or agreement in which the buyer or prospective buyer is offered the opportunity to purchase goods or services and in connection with the purchase receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if the receipt of compensation is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods in contravention of Tenn. Code Ann. § 47-18-104(b)(18).

4.3 Respondents shall be prohibited from representing to consumers or other persons that a consumer will receive a "free month of service for every subscriber they refer" or term or phrase of similar import, if the person will not actually receive a free month of service. Without limiting the scope of this provision, Respondents shall be prohibited from indicating or representing that a consumer will receive a free month of service for referring a new subscriber but instead providing the consumer a credit of the amount of the value of service referred.

4.4 Respondents shall be prohibited from failing to affirmatively, clearly and conspicuously inform consumers of the restrictions (such as but not limited to, commercial accounts will be credited for the value of the customer they refer, *i.e.* a commercial customer at \$79.00/month refers a residential customer at \$45.00 month, the commercial customer will receive a credit of \$45.00, offer not valid with other discounts, offer may not be applied to InterMedia@Home service requests, etc.) that apply to an offer.

4.5 Respondents shall be prohibited from stating an offer is a "limited time offer", if such is not the case.

4.6 Respondents shall be prohibited from making an offer to consumers and then in small print contradicting that offer.

4.7 Respondents shall be prohibited from representing that its referral offer program (*i.e.* the offer to provide a free month of service for every consumer referred) has characteristics, uses, benefits or quantities that it does not have.

4.8 Respondents shall be prohibited from representing that its referral offer promotion (*i.e.* the offer to provide a free month of service for every consumer referred) confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law.

4.9 Respondents shall fully comply with the Federal Trade Commission Guide Concerning Use of the Word "FREE".

4.10 Respondents shall fully comply with the Tennessee prize, gift and award statutes located at Tenn. Code Ann. §§ 47-18-120 and 124.

5. RESTITUTION, REPRESENTATION AND WARRANTY

5.1 Respondents have represented and warranted to the State that no consumer has complained about Respondents' chain referral solicitations. Further, no consumer has requested to cancel the purchase of cable Internet access because of such solicitations or because the consumer alleges he/she only purchased the service to obtain the right to obtain referral fees as described in the solicitation. As a result, the Respondents have represented and warranted to the State that no restitution is due any Tennessee consumer as a result of the violations of law engaged in by Respondents when distributing the chain referral solicitations. Respondents understand that the State expressly relies upon Respondents' representations and if they are misleading, deceptive, false, incomplete, unfair or inaccurate, the State has the right to move to vacate or set aside this Assurance and Agreed Order and request that Respondents be held in contempt, if the State so elects.

6. PAYMENT OF ATTORNEYS' FEES AND COSTS TO THE STATE

6.1 Respondents shall pay the sum of Two Thousand Five Hundred and 00/100 Dollars (\$ 2,500.00) to the State of Tennessee for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - Attorney General" on the day of execution of this Assurance.

7. CIVIL PENALTIES

7.1 Respondents shall pay the sum of Seven Thousand and 00/100 Dollars (\$7,000.00) to the State of Tennessee, Division of Consumer Affairs as a civil penalty pursuant to Tenn. Code Ann. § 47-18-108(b)(3). Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - Division of Consumer Affairs" on the day of execution of this Assurance.

8. CONSUMER EDUCATION FUNDING

8.1 Respondents shall pay the sum of One Thousand and 00/100 Dollars (\$1,000.00) to the State of Tennessee to fund a consumer education project selected at the sole discretion of the Director of the Division of Consumer Affairs. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the State of Tennessee on the day of execution of this Assurance.

9. MONITORING AND COMPLIANCE

9.1 Upon request, Respondents agree to provide books, records and documents to the State at any time, and further, to informally or formally under oath, provide testimony and other information to the State relating to compliance with this Assurance. Respondents shall make any requested information available within one (1) week of the request, at the Office of the Attorney General or at any other location within the State of Tennessee that is mutually agreeable in writing to Respondents and the Attorney General. This section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

9.2 The State of Tennessee has the right to test shop Respondents for the purpose of confirming compliance with this Assurance and state law. The test shoppers are not required to disclose that they are representatives of the State of Tennessee when making contact with Respondents. Further, the State of Tennessee may record any or all aspects of its visit(s) or telephone calls to Respondents in audio or video form without notice to Respondents.

10. PRIVATE RIGHT OF ACTION

10.1 Pursuant to Tenn. Code Ann. §§ 47-18-109 and 47-18-108(e), nothing in this Assurance shall be construed to affect any private right of action that a consumer or any other person may hold against Respondents.

11. PENALTY FOR FAILURE TO COMPLY

11.1 Respondents understand that upon execution and filing of this Assurance, any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act.

11.2 Respondents understand that any knowing violation of the terms of this Assurance shall be punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation, in addition to any other appropriate penalties and sanctions, including but not limited to contempt sanctions and the imposition of attorneys' fees and civil penalties. Respondents agree to pay all court costs and reasonable attorneys' fees associated with any successful petitions to enforce this Assurance and Agreed Order against the Respondents.

12. REPRESENTATIONS AND WARRANTIES

12.1 Respondents represent and warrant that the execution and delivery of this Assurance is its free and voluntary act, that this Assurance is the result of good faith negotiations, and that Respondents agree that the Assurance and terms hereof are fair and reasonable. The parties warrant that they will implement the terms of this Assurance in good faith. Further, no offers, agreements, or inducements of any nature whatsoever have been made to it by the State of Tennessee, its attorney or any employee of the Attorney General's Office or the Division of Consumer Affairs to procure this Assurance.

12.2 Respondents represent that signatories to this Assurance have authority to act for and bind the Respondents.

12.3 Respondents will not participate, directly or indirectly, in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

12.4 Neither Respondents nor anyone acting on their behalf shall state or imply or cause to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance, or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Respondents.

12.5 Acceptance of this Assurance by the State shall not be deemed approval by the State of any of Respondents' advertising or other business practices.

12.6 Within thirty (30) days of the entry of this Assurance, Respondents shall submit a copy of this Assurance to each of their officers, directors, employees and any third parties who act directly or indirectly on behalf of the Respondents as an agent or independent contractor involved in the promotion, sales, installation or service of Respondents' Internet services in the State of Tennessee. Within forty-five (45) days of entry of this Assurance, Respondents shall provide the State with an affidavit verifying and certifying that all required persons have been supplied with a copy of this Assurance.

12.7 Respondents warrant and represent that it is the proper party to this Assurance and Order. Respondents further acknowledge that the State expressly relies upon this representation and warranty, and that if it is false, misleading, deceptive, unfair or inaccurate, the State has the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondents be held in contempt, if the State so elects.

12.8 InterMedia Partners Southeast, a California general partnership, Intermedia Partners IV, L.P., a California limited partnership, and Brenmore Cable Partners, L.P, a California general partnership, doing business as InterMedia@Home, represents that they are the true legal names of the entities entering into this Assurance of Voluntary Compliance and Agreed Order. Respondents understand that the State expressly relies upon this representation and if this representation is false, unfair, deceptive, inaccurate or misleading, the State shall have the right to move to vacate or set aside this Assurance and Agreed Order,

and request that Respondents be held in contempt, if the State so elects.

12.9 This Assurance and Agreed Order may only be enforced by the parties hereto.

12.10 The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

12.11 This document shall not be construed against the "drafter" because both parties participated in the drafting of this document.

12.12 This Assurance and Agreed Order constitutes the complete agreement of the parties with regard to the resolution of the matters set forth in the State's Petition. This Assurance is limited to resolving only matters set forth in the State's Petition.

12.13 Nothing in this Assurance shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Assurance shall not bar the State, a District Attorney General or other governmental entity from enforcing laws, regulations or rules against Respondents.

12.14 This Assurance shall be binding and effective against Respondents upon Respondents' execution of the Assurance. In the event the court does not approve this Assurance, this Judgment shall be of no force and effect against the State of Tennessee.

12.15 Respondents have been advised of their right to legal counsel in connection with this matter. If Respondents decline to obtain the assistance of legal counsel, Respondents have expressly waived their right to counsel by executing this Assurance.

12.16 Nothing in this Assurance constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

12.17 Respondents waive and will not assert any defenses Respondents may have to any criminal prosecution or administrative action relating to the conduct described in the State's Petition, which defenses may be based, in whole or in part, on the Double Jeopardy or Excessive Fines Clauses of the Constitution or principles set forth in *Hudson v. United States*, 118 S.Ct. 488 (1997), and *Austin v. United States*, 509 U.S. 602 (1993), and agree that the amount that Respondents have agreed to pay under the terms of this Assurance is not punitive in effect or nature for purposes of such criminal prosecution or administrative action.

13. COMPLIANCE WITH ALL LAWS, REGULATIONS AND RULES

13.1 Nothing in this Assurance and Order shall be construed as relieving Respondents of the obligation

to comply with all state or federal laws, regulations or rules.

14. FILING OF ASSURANCE

14.1 Upon the execution of this Assurance, the Attorney General shall prepare and file in the Chancery Court for Davidson County a Petition, Agreed Order and this Assurance for the Court's approval. Respondents hereby waive any and all rights which they may have to be heard in connection with judicial proceedings upon the Petition. Respondents agree to pay all costs of filing such Petition, Assurance and Agreed Order. Simultaneously with the execution of this Assurance, Respondents shall execute an Agreed Order. This Assurance is made a part of and is incorporated into the Agreed Order. The Respondents agree that they consent to the entry of this Assurance and Agreed Order without further notice.

15. APPLICABILITY OF ASSURANCE TO RESPONDENTS AND THEIR SUCCESSORS

15.1 Respondents agree that the duties, responsibilities, burdens and obligations undertaken in connection with this Assurance shall apply to it, each of their officers, directors, managers, agents, assigns, representatives, employees, partners, subsidiaries, affiliates, parents, related entities, joint venturers, persons or other entities they control, manage or operate, their successors and assigns, and to other persons or entities acting directly or indirectly on their behalf.

16. NOTIFICATION TO STATE

16.1 Any notices required to be sent to the State or the Respondents by this Assurance shall be sent by United States mail, certified mail return receipt requested or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the State:

Deputy Attorney General
Office of the Attorney General
Consumer Protection Division
425 Fifth Avenue North, 2nd Floor
Nashville, Tennessee 37243
(615) 741-1671

For the Respondents:
Jerome J. Kashinski

InterMedia Partners Southeast
Intermedia Partners IV, L.P.
Brenmore Cable Partners, L.P
Division Counsel
Central Division c/o AT&T Broadband
Suite 1100
4700 S. Syracuse Street
Denver, Colorado 80237-2722
(303) 267-4200

16.2 For five (5) years following execution of this Assurance, Respondents shall notify the Office of the Attorney General, in writing, at least thirty (30) days prior to the effective date of any proposed changes in their corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation or dissolution or subsidiaries, or any other changes in Respondents' status that may affect compliance with obligations arising out of this Assurance.

17. COURT COSTS

17.1 All costs associated with the filing and distribution of this Assurance and any other incidental costs or expenses incurred thereby shall be borne by Respondents. No costs shall be taxed against the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the State.